

Informal Working Paper No. 1/Rev.2*
26 August 1974

SECOND COMMITTEE

Formulation of main trends

INTRODUCTION

The sole purpose of this informal working paper is to reflect in generally acceptable formulations the main trends which have emerged from the proposals submitted either to the United Nations Sea-Bed Committee or to the Conference itself.

The fact of including these formulations does not imply any opinion on the degree of support they have commanded either in the preparatory stage or in the proceedings of the current session of the Conference. It does not imply either that all the proposals from which these formulations have been taken have been the subject of discussion. The inclusion of a provision in this paper, whether or not only one formula appears, does not necessarily imply that there are no other opinions concerning these questions or that all or most delegations agree on the necessity for such a provision.

All the proposals submitted to the United Nations Sea-Bed Committee and to the Conference are maintained and may be considered by this Committee at any time. Thus, the preparation of this document and its acceptance by the Committee as a working paper in no way signifies that these proposals have been withdrawn. There is no question of taking any decisions at the present stage, in accordance with the method of work adopted by the Committee at its meeting on 3 July, once this task has been carried out, the item will be "frozen" and the Committee will pass on to the next item. No decision has to be taken until all the closely interrelated items have been thoroughly discussed.

Since the purpose of this paper is to focus the discussion of each of the items on the fundamental issues, leaving until later the consideration of supplementary rules and drafting points, the paper does not include all the proposals appearing in volume III of the report of the Sea-Bed Committee or all the variants, many of which reflect only drafting changes, appearing in volume IV of the same report.

It will be recalled that in submitting the first revised version of this paper, the officers considered it necessary to stipulate that, for purely methodological reasons, the position of those delegations who make their acceptance of the territorial sea régime conditional upon the creation of an exclusive economic zone is not reflected as a trend in this paper.

* Reissued for technical reasons.

PART 2. TERRITORIAL SEA

2.1 Nature and characteristics, including the question of the unity or plurality of regimes

Provision I Nature and characteristics

2.2 Historic waters

Provision II-III Historic waters

2.3 Limits

2.3.1 Question of the delimitation of the territorial sea

Provision IV	(a)	Normal baselines
" V-VII	(b)	Straight baselines
" VIII	(c)	Rivers
" XIV-XV	(d)	Bays, the coasts of which belong to a single State
" XVI	(e)	Historic bays or other historic waters
" XVII	(f)	Permanent harbour works
" XVIII	(g)	Roadsteads
" XIX	(h)	Low-tide elevations
" XX	(i)	Delimitation between States with opposite or adjacent coasts

2.3.2 Breadth of the territorial sea: global or regional criteria; open seas and oceans, semi-enclosed and enclosed seas

Provision XXI	(a)	Breadth of the territorial sea
" XXII	(b)	Global or regional criteria, open seas and oceans, semi-enclosed and enclosed seas

2.4 Innocent passage in the territorial sea

Provision XXIII-XXXIV	(a)	Rules applicable to all ships
" XXXV-XXXVI	(b)	Rules applicable to ships with special characteristics
" XXXVII-XXXIX	(c)	Rules applicable to merchant ships
" XL-XLI	(d) (i)	Rules applicable to Government ships
" XLII-XLIV	(d) (ii)	Rules applicable to warships
" XLV	(d) (iii)	State responsibility for Government ships

2.5 Freedom of navigation and overflight resulting from the question of plurality of regimes

Item 2 - Territorial sea

2.1 Nature and characteristics, including the question of the unity or plurality of régimes

PROVISION I

Formula A

1. The sovereignty of a State extends, beyond its land territory and its internal waters, to a belt of sea adjacent to its coast, described as the territorial sea.
2. The sovereignty of a coastal State extends to the air space over the territorial sea as well as to its bed and subsoil.
3. This sovereignty is exercised subject to the provisions of these articles and to other rules of international law.

Formula B

1. The sovereignty of a coastal State extends beyond its coast and internal or archipelagic waters to an adjacent zone described as the territorial sea.
2. ... (same as in Formula A above).
3. This sovereignty is exercised in accordance with the provisions of these articles and allows a plurality of régimes in the cases and for the purposes indicated hereinafter.

Formula C

1. The sovereignty of a coastal State extends beyond its land territory and internal waters, and in the case of archipelagic States, their archipelagic waters, over an adjacent belt of sea defined as the territorial sea.
2. ... (same as in Formula A above).
3. ... (same as in Formula A above).

2.2 Historic waters

PROVISION II

The territorial sea may include waters pertaining to a State by reason of an historic right or title and actually held by it as its territorial sea.

PROVISION III

No claim to historic waters shall include land territory or waters under the established sovereignty, sovereign rights or jurisdiction of another State.

2.3. Limits

2.3.1 Question of the delimitation of the territorial sea

(a) Normal baselines

PROVISION IV

Formula A

Except where otherwise provided in these articles, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State.

Formula B

A coastal State may adopt its own method of drawing the baseline according to the topographical features of its coast.

In localities where the coastline is regular or the coast is low and flat, the method of natural baseline, i.e. taking the low-tide lines as the baselines, may be employed for measuring the breadth of the territorial sea.

(b) Straight baselines

PROVISION V

Formula A

In localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured.

Formula B

1. In localities where the coastline is indented or there are islands along the coast, the method of a series of straight baselines, i.e. taking the lines connecting the basepoints on the coast and the outermost islands as the baselines, may be employed for measuring the breadth of the territorial sea.

2. A coastal State with coasts of great lengths and complicated topography may employ the method of mixed baselines, i.e. drawing the baseline in turn by the methods provided for in article ... and this article to suit different conditions.

-5-

PROVISION VI

The drawing of such baselines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the lines must be sufficiently closely linked to the land domain to be subject to the régime of internal waters.

PROVISION VII

Formula A

Baselines shall not be drawn to and from low-tide elevations, unless lighthouses or similar installations which are permanently above sea level have been built on them.

Formula B

.....
or except where States have historically and consistently applied low-tide elevation for the purpose of drawing straight baselines.

PROVISION VIII

Where the method of straight baselines is applicable under the provisions of paragraph ..., account may be taken, in determining particular baselines, of economic interests peculiar to the region concerned, the reality and the importance of which are clearly evidenced by a long usage.

PROVISION IX

(In localities where no stable low-water line exists along the coast due to continual process of alluvion and sedimentation and where the seas adjacent to the coast are so shallow as to be non-navigable by other than small boats and pertain to the character of inland waters, baselines shall be drawn linking appropriate points on the sea adjacent to the coast not exceeding 10 fathom line.

PROVISION X

The system of straight baselines may not be applied by a State in such a manner as to cut off from the high seas the territorial sea of another State.

PROVISION XI

The coastal State must clearly indicate straight baselines on charts, to which publicity must be given.

PROVISION XII

1. Waters on the landward side of the baseline of the territorial sea form part of the internal waters of the State.
2. Where the establishment of a straight baseline in accordance with article ... has the effect of enclosing as internal waters areas which previously had been considered a part of the territorial sea or of the high seas, a right of innocent passage, as provided in articles ... to ... shall exist in those waters.

(c) Rivers

PROVISION XIII

If a river flows directly into the sea, the baseline shall be a straight line across the mouth of the river between points on the low-tide line of its banks.

(d) Bays the coasts of which belong to a single State

PROVISION XIV

1. This article relates only to bays the coasts of which belong to a single State.
2. For the purposes of these articles, a bay is a well-marked indentation whose penetration is in such proportion to the width of its mouth as to contain land-locked waters and constitute more than a mere curvature of the coast. An indentation shall not, however, be regarded as a bay unless its area is as large as, or larger than, that of the semi-circle whose diameter is a line drawn across the mouth of that indentation.
3. For the purpose of measurement, the area of an indentation is that lying between the low-water mark around the shore of the indentation and a line joining the low-water marks of its natural entrance points. Where, because of the presence of islands, an indentation has more than one mouth, the semi-circle shall be drawn on a line as long as the sum of the lengths of the lines across the different mouths. Islands within an indentation shall be included as if they were part of the water area of the indentation.

Formula A

4. If the distance between the low-water marks of the natural entrance points of a bay does not exceed 24 miles, a closing line may be drawn between these two low-water marks and the waters enclosed thereby shall be considered as internal waters.

Formula B

4. If the distance between the low-water marks of the natural entrance points of a bay does not exceed ... miles, a closing line may be drawn between these two low-water marks and the waters enclosed thereby shall be considered as internal waters.

PROVISION XV

Formula A

5. Where the distance between the low-water marks of the natural entrance points of a bay exceeds 24 miles, a straight baseline of 24 miles shall be drawn within the bay in such a manner as to enclose the maximum area of water that is possible with a line of that length.

Formula B

5. Where the distance between the low-water marks of the natural entrance points of a bay exceeds ... miles, a straight baseline of ... miles shall be drawn within the bay in such a manner as to enclose the maximum area of water that is possible with a line of that length.

(e) Historic bays or other historic waters

PROVISION XVI

Formula A

6. The foregoing provisions shall not apply to so-called "historic" bays, or in any case where the straight baseline system provided for in article ... is applied.

Formula B

6. In the absence of other applicable rules the baselines of the territorial sea are measured from the outer limits of historic bays or other historic waters.

(f) Permanent harbours works

PROVISION XVII

Formula A

For the purpose of delimiting the territorial sea, the outermost permanent harbour works which form an integral part of the harbour system shall be regarded as forming part of the coast.

Formula B

For the purpose of delimiting the territorial sea, the outermost permanent harbour works which form part of the harbour system and which are above water at high tide shall be regarded as forming part of the coast.

(g) Roadsteads

PROVISION XVIII

Roadsteads which are normally used for the loading, unloading and anchoring of ships, and which would otherwise be situated wholly or partly outside the outer limit of the territorial sea, are included in the territorial sea. The coastal State must clearly demarcate such roadsteads and indicate them on charts together with their boundaries, to which due publicity must be given.

(h) Low-tide elevations

Approved For Release 2001/12/04 : CIA-RDP82S00697R000300050002-0

PROVISION XIX

1. A low-tide elevation is a naturally formed area of land which is surrounded by and above water at low-tide but submerged at high tide. Where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the mainland or an island, the low-water line on that elevation may be used as the baseline for measuring the breadth of the territorial sea.

2. Where a low-tide elevation is wholly situated at a distance exceeding the breadth of the territorial sea from the mainland or an island, it has no territorial sea of its own.

(i) Delimitation between States with opposite or adjacent coasts

PROVISION XX

Formula A

Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The provisions of this paragraph shall not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance with this provision.

The line of delimitation between the territorial seas of two States laying opposite to each other or adjacent to each other shall be marked on large-scale charts officially recognized by the coastal States.

Formula B

Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line, every point of which is equidistant from the nearest points on the baselines ... from which the breadth of the territorial seas of each of the two States is measured.

Formula C

1. Where the coasts of two or more States are adjacent and/or opposite, the delimitation of the boundary lines of the respective territorial seas shall be determined by agreement among them in accordance with equitable principles.

... in the course of negotiations, the States shall apply by one or a combination of delimitation methods appropriate for arriving at an equitable agreement, taking into account special circumstances

3. The States shall make use of the methods envisaged in Article 33 of the United Nations Charter or other peaceful means and methods open to them, in order to resolve differences which may arise in the course of negotiations.

Formula D

Coastal States adjacent or opposite to each other shall define the boundaries between their territorial seas on the principles of mutual respect for sovereignty and territorial integrity, equality and reciprocity.

2.3.2 Breadth of the territorial sea: global or regional criteria; open seas and oceans, semi-enclosed and enclosed seas

(a) Breadth of the territorial sea

PROVISION XXI

Formula A

Each State shall have the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines drawn in accordance with articles ... of this Convention.

Formula B

Each State has the right to establish the breadth of its territorial sea up to a distance not exceeding 200 nautical miles, measured from the applicable baselines.

Formula C

The maximum limit provided in this article shall not apply to historic waters held by any State as its territorial sea.

Any State which, prior to the approval of this Convention, shall have already established a territorial sea with a breadth more than the maximum provided in this article shall not be subject to the limit provided herein.

/...

- (b) Global criterion, which shall be determined in accordance with the enclosed form

PROVISION XXII

Formula A

Global criterion.

Formula B

1. Each coastal State shall have the right to establish the limits of the adjacent sea subject to its sovereignty and jurisdiction, within the maximum distance referred to in paragraph 2 of this article, having regard to reasonable criteria which take into account the relevant geographical, geological, ecological, economic and social factors and interests relating to the preservation of the marine environment and national sovereignty.
2. In seas where the zone of sovereignty and jurisdiction of a coastal State can extend to a distance of 200 nautical miles, measured from the applicable baselines, without interfering with the zone of sovereignty and jurisdiction of another coastal State, that distance shall be recognized as the maximum outer limit applicable to the respective zones of sovereignty and jurisdiction.

Formula C

1. A coastal State shall have the right to determine the breadth of its territorial sea within a maximum limit of (...) nautical miles measured from applicable baselines drawn in accordance with the relevant articles of this Convention.
2. The right referred to in paragraph (1) shall not be exercised in such a manner as to cut off the territorial sea of another State or any part thereof from the high seas.
3. In areas of semi-closed seas, having special geographical characteristics, the breadth of the territorial sea shall be determined jointly by the States of that area.

2.4 Innocent passage in the territorial sea

- (a) Rules applicable to all ships

PROVISION XXIII

Formula A

Subject to the provisions of these articles, ships of all States, whether coastal or not, shall enjoy the right of innocent passage through the territorial sea.

Formula B

In territorial seas whose breadth exceeds 12 nautical miles, ships of all States, whether coastal or not, shall enjoy the right of innocent passage in the form prescribed in article (...) within a limit of ... nautical miles measured from the applicable baselines.

Beyond this internal limit, ships shall enjoy freedom of passage subject to the provisions of provision XLVI.

PROVISION XXIV

Formula A

Passage means navigation through the territorial sea for the purpose either of traversing that sea without entering internal waters, or of proceeding to internal waters, or of making for the high seas from internal waters.

Formula B

1. Innocent passage means navigation through the territorial sea for the purpose either of traversing that sea without entering any port or internal waters, or of proceeding to or from any port or internal waters.

2. For the purposes of these articles the term "port" includes any harbour or roadstead normally used for the loading, unloading or anchoring of ships.

PROVISION XXV

Innocent passage includes stopping and anchoring, but only in so far as the same are incidental to ordinary navigation or are rendered necessary by force majeure or by distress.

PROVISION XXVI

Formula A

Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with these articles and with other rules of international law.

Formula B

1. ... (same as Formula A).

2. Passage of a foreign ship shall be considered to be prejudicial to the peace, good order or security of the coastal State, if in the territorial sea it engages in any threat or use of force in violation of the Charter of the United Nations against the territorial integrity or political independence of the coastal State or of any other State, or if it engages in any of the following activities:

- (i) any other warlike act against the coastal or any other State;
- (ii) any exercise or practice with weapons of any kind;
- (iii) the launching or taking on board of any aircraft;
- (iv) the launching, landing or taking on board of any military device;
- (v) the embarking or disembarking of any person or cargo;
- (vi) any act of espionage affecting the defence or security of the coastal State;
- (vii) any act of propaganda affecting the security of the coastal State;
- (viii) any act of interference with any systems of communication of the coastal or any other State;
- (ix) any act of interference with any other facility or installation of the coastal State;
- (x) any other activity not having a direct bearing on passage.

3. Passage shall not be considered prejudicial to the peace, good order or security of the coastal State if any such activity is carried out with the prior authorization of the coastal State or as rendered necessary by force majeure or distress or for the purpose of rendering assistance to persons, ships or aircraft in danger or distress, or as may be prudent for safe navigation.

Formula C

1. ... (same as Formula A).
2. Passage of a foreign ship shall not be considered prejudicial to the peace, good order or security of the coastal State unless, in the territorial sea, it engages in any threat or use of force in violation of the Charter of the United Nations against the territorial integrity or political independence of the coastal State, or without authorization from the coastal State or justification under international law in any of the following activities:
 - (a) any exercise or practice with weapons of any kind;
 - (b) the launching or taking on board of any aircraft;
 - (c) the launching, landing or taking on board of any military device;
 - (d) the embarking or disembarking of any person or cargo contrary to the customs, fiscal, immigration or sanitary laws or regulations of the coastal State;
 - (e) any act aimed at interfering with any system of communication of the coastal State;

(f) any act aimed at interfering with any other facilities or installations of the coastal State.

3. ... (same as Formula B, paragraph 3).

PROVISION XXVII

Passage shall be continuous and expeditious. Passing ships shall refrain from manoeuvring unnecessarily, hovering or engaging in any activity other than mere passage.

PROVISION XXVIII

Formula A

1. Foreign ships exercising the right of innocent passage shall comply with the laws and regulations enacted by the coastal State in conformity with these articles and other rules of international law and, in particular, with such laws and regulations relating to transport and navigation.
2. Passage of foreign fishing vessels shall not be considered innocent if they do not observe such laws and regulations as the coastal State may make and publish in order to prevent these vessels from fishing in the territorial sea.

Formula B

1. The coastal State may make laws and regulations, in conformity with the provisions of this Convention and other rules of international law, relating to innocent passage through the territorial sea, which laws and regulations may be in respect of all or any of the following:

- (a) the safety of navigation and the regulation of marine traffic, including the designation of sealanes and the establishment of traffic separation schemes;
- (b) the protection of navigational aids and facilities and other facilities or installations including those for exploration and exploitation of the marine resources of the territorial sea and the sea-bed and subsoil thereof.
- (c) the protection of submarine or aerial cables and pipelines;
- (d) the conservation of the living resources of the sea;
- (e) the preservation of the environment of the coastal State, including the territorial sea, and the prevention of pollution thereto;
- (f) research of the marine environment and hydrographic surveys;
- (g) the prevention of infringement of the customs, fiscal, immigration, quarantine or sanitary or phytosanitary regulations of the coastal State;
- (h) the prevention of infringement of the fisheries regulations of the coastal State, including inter alia those relating to the stowage of gear.

2. Such laws and regulations shall not

(a) apply to or affect the design, construction, manning or equipment of foreign ships or matters regulated by generally accepted international rules unless specifically authorized by such rules, or

(b) impose requirements on foreign ships which have the practical effect of denying or prejudicing the right of innocent passage in accordance with this Convention

3. The coastal State shall give due publicity to all laws and regulations made by it under the provisions of this article.

4. Foreign ships exercising the right of innocent passage through the territorial sea shall comply with all such laws and regulations of the coastal State.

5. During their passage through the territorial sea, foreign ships, including marine research and hydrographic survey ships, may not carry out any research or survey activities without the prior authorization of the coastal State.

6. A coastal State may, where it considers it necessary having regard to the density of traffic concentration, require foreign ships exercising the right of innocent passage through its territorial sea to use such sealanes and traffic separation schemes as may be designated or prescribed by the coastal State for the regulation of the passage of ships.

7. A coastal State may from time to time, after giving due publicity thereto, substitute other sealanes for any sealanes previously designated by it under the provisions of this article.

8. In the designation of sealanes and the prescription of traffic separation schemes under the provisions of this article a coastal State shall take into account:

- (a) the recommendations of competent international organizations;
- (b) any channels customarily used for international navigation;
- (c) the special characteristics of particular channels; and
- (d) the special characteristics of particular ships.

9. The coastal State shall clearly demarcate all sealanes designated by it under the provisions of this article and indicate them on charts to which due publicity shall be given.

10. Foreign ships exercising the right of innocent passage through the territorial sea shall at all times, and particularly when using sealanes and traffic separation schemes, designated or prescribed by the coastal State under the provisions of this article, comply with all generally accepted international regulations relating to the prevention of collisions at sea.

11. If in the application of its laws and regulations, a coastal State acts in a manner contrary to the provisions of these articles and loss or damage results to any foreign ship exercising the right of innocent passage through the territorial sea, the coastal State shall compensate the owners of such ship for that loss or damage.

Formula C

1. The coastal State may enact regulations relating to navigation in its territorial sea. Such regulations may relate, inter alia, to the following:

(a) Maritime safety and traffic and, in particular, the establishment of sealanes and traffic separation schemes;

(b) Installation and utilization of facilities and systems of aids to navigation and the protection thereof;

(c) Installation and utilization of facilities to explore and exploit marine resources and the protection thereof;

(d) Maritime transport;

(e) Passage of ships with special characteristics;

(f) Preservation of marine and coastal environment and prevention of all forms of pollution;

(g) Research of the marine environment.

2. ... (same as in Formula B, para. 4).

PROVISION XXIX

Formula A

Submarines and other underwater vehicles are required to navigate on the surface and to show their flag.

Formula B

Submarines and other underwater vehicles in innocent passage may be required to navigate on the surface and to show their flag.

Formula C

Submarines are required to navigate on the surface and to show their flag.

PROVISION XXX

The coastal State shall not hamper the innocent passage of foreign ships through the territorial sea and, in particular, it shall not, in the application of these articles or of any laws or regulations made under the provisions of these articles, discriminate in form or in fact against the ships of any particular State or against ships carrying cargoes to, from or on behalf of any particular State.

PROVISION XXXI

The coastal State is required to give appropriate publicity to any dangers to navigation, of which it has knowledge, within its territorial sea.

PROVISION XXXII

The coastal State may take the necessary steps in its territorial sea to prevent passage which is not innocent.

PROVISION XXXIII

Formula A

In the case of ships proceeding to internal waters, the coastal State shall also have the right to take the necessary steps to prevent any breach of the conditions to which admission of those ships to those waters is subject.

Formula B

In the case of ships proceeding to any port or internal waters, the coastal State shall also have the right to take the necessary steps to prevent any breach of the conditions to which admission of those ships to those waters is subject.

PROVISION XXXIV

The coastal State may, without discrimination amongst foreign ships, suspend temporarily in specified areas of its territorial sea the innocent passage of foreign ships if such suspension is essential for the protection of its security. Such suspension shall take effect only after having been duly published.

Approved For Release 2001/12/04 : CIA-RDP82S00697R000300050002-0

(b) Rules applicable to ships with special characteristics

PROVISION XXXV

Formula A

1. Tankers and ships carrying nuclear or other inherently dangerous or noxious substances or materials may be required to give prior notification of their passage to the coastal State and to confine their passage to such sealanes as may be designated for that purpose by the coastal State.
2. For the purposes of this article, the term "tanker" includes any ship used for the carriage in bulk in a liquid state of petroleum, natural gas or any other highly inflammable, explosive or pollutive substance.
3. In order to expedite the passage of ships through the territorial sea the coastal State shall ensure that the procedures for notification under the provisions of this article shall be such as not to cause any undue delay.

Formula B

1. The coastal State may regulate the passage through its territorial sea of the following:
 - (a) nuclear-powered ships or ships carrying nuclear weapons;
 - (b) marine research and hydrographic survey ships;
 - (c) oil tankers and chemical tankers carrying harmful or noxious liquid substances in bulk;
 - (d) ships carrying nuclear substances or materials.
2. The coastal State may require prior notification to or authorization by its competent authorities for the passage through its territorial sea of foreign ships mentioned in subparagraph (a) of paragraph 1.
3. The coastal State may require prior notification to its competent authorities for the passage through its territorial sea, except along designated sealanes, of foreign ships mentioned in subparagraph (b) of paragraph 1.
4. The coastal State may require the passage through its territorial sea along designated sealanes of foreign ships mentioned in subparagraphs (c) and (d) of paragraph 1, in conformity with article ...

PROVISION XXXVI

Foreign nuclear-powered ships and ships carrying nuclear substances shall, during passage through territorial waters, observe special precautionary measures and carry papers established for such ships by international agreements.

/...

Approved For Release 2001/12/04 : CIA-RDP82S00697R000300050002-0

Approved For Release 2001/12/04 : CIA-RDP82S00697R000300050002-0

(c) Rules applicable to merchant ships

PROVISION XXXVII

1. No charge may be levied upon foreign ships by reason only of their passage through the territorial sea.
2. Charges may be levied upon a foreign ship passing through the territorial sea as payment only for specific services rendered to the ship. These charges shall be levied without discrimination.

PROVISION XXXVIII

Formula A

1. The criminal jurisdiction of the coastal State should not be exercised on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connexion with any crime committed on board the ship during its passage, save only in the following cases:
 - (a) If the consequences of the crime extend to the coastal State; or
 - (b) If the crime is of a kind to disturb the peace of the country or the good order of the territorial sea; or
 - (c) If the assistance of the local authorities has been requested by the captain of the ship or by the consul of the country whose flag the ship flies; or
 - (d) If it is necessary for the suppression of illicit traffic in narcotic drugs
2. The above provisions do not affect the right of the coastal State to take any steps authorized by its laws for the purpose of an arrest or investigation on board a foreign ship passing through the territorial sea after leaving internal waters.
3. In the cases provided for in paragraphs 1 and 2 of this article, the coastal State shall, if the captain so requests, advise the consular authority of the flag State before taking any steps, and shall facilitate contact between such authority and the ship's crew. In cases of emergency this notification may be communicated while the measures are being taken.
4. In considering whether or how an arrest should be made, the local authorities shall pay due regard to the interests of navigation.
5. The coastal State may not take any steps on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connexion with any crime committed before the ship entered the territorial sea, if the ship, proceeding from a foreign port, is only passing through the territorial sea without entering internal waters.

Formula B

1. (a) to (c) ... (same as Formula A)

Approved For Release 2001/12/04 : CIA-RDP82S00697R000300050002-0

(d) If it is necessary for the suppression of illicit traffic in narcotic and psychotropic drugs.

2. to 5. ... (same as Formula A)

PROVISION XXXIX

1. The coastal State should not stop or divert a foreign ship passing through the territorial sea for the purpose of exercising civil jurisdiction in relation to a person on board the ship.

2. The coastal State may not levy execution against or arrest the ship for the purpose of any civil proceedings, save only in respect of obligations or liabilities assumed or incurred by the ship itself in the course or for the purpose of its voyage through the waters of the coastal State.

3. The provisions of the previous paragraph are without prejudice to the right of the coastal State, in accordance with its laws, to levy execution against or to arrest, for the purpose of any civil proceedings, a foreign ship lying in the territorial sea, or passing through the territorial sea after leaving internal waters.

(d) Rules applicable to government ships

(i) Government ships other than warships

PROVISION XL

Formula A

The rules contained in sections (a) and (c) shall apply to government ships operated for commercial purposes.

Formula B

Government ships operated for commercial purposes in foreign territorial waters shall enjoy immunity, and therefore the measures referred to in this provision may be applied to them only with the consent of the State whose flag the ship flies.

PROVISION XLI

1. The rules contained in section (a) and in provision XXVII shall apply to government ships operated for non-commercial purposes.

2. With such exceptions as are contained in the provisions referred to in the preceding paragraph, nothing in these articles affects the immunities which such ships enjoy under these articles or other rules of international law.

(ii) Warships

PROVISION XLII

1. For the purpose of this article, the term "warship" means a ship belonging to the

Approved For Release 2001/12/04 : CIA-RDP82S00697R000300050002-0

armed forces of a State bearing the external marks distinguishing such ships of its nationality, under the command of an officer duly commissioned by the Government of the State and whose name appears in the appropriate Service List or its equivalent, and manned by a crew who are under regular armed forces discipline.

2. The rules contained in section (a) of these articles shall apply to warships.

PROVISION XLIII

Formula A

If any warship does not comply with the regulations for the coastal State concerning passage through the territorial sea and disregards any request for compliance which is made to it, the coastal State may require the warship to leave the territorial sea.

Formula B

1. Foreign warships exercising the right of innocent passage shall not, in the territorial sea, carry out any manoeuvres other than those having direct bearing on passage.
2. If any warship does not comply with the laws and regulations of the coastal State relating to passage through the territorial sea or fails to comply with the requirements of paragraph ... of this article, and disregards any request for compliance which is made to it, the coastal State may suspend the right of passage of such warship and may require it to leave the territorial sea by such safe and expeditious route as may be directed by the coastal State.

Formula C

1. The coastal State may require prior notification to or authorization by its competent authorities for the passage of foreign warships through its territorial sea, in conformity with regulations in force in such a State.
2. Foreign warships exercising the right of innocent passage shall not perform any activity which does not have a direct bearing on the passage, such as:
 - (a) Carrying out any exercise or practice with weapons of any kind;
 - (b) Assumption of combat position by the crew;
 - (c) Flying their aircraft;
 - (d) Intimidation or display of force;
 - (e) Carrying out research operations of any kind.
3. ... (same as Formula A).

PROVISION XLIV

Subject to provisions XLIII and XLV, nothing in these provisions affects the immunities which warships enjoy under these provisions or other rules of international law.

(iii) State responsibility for government ships

PROVISION XLV

If, as a result of any non-compliance by any warship or other government ship operated for non-commercial purposes with any of the laws or regulations of the coastal State relating to passage through the territorial sea or with any of the provisions of these articles or other rules of international law, any damage is caused to the coastal State (including its environment and any of its facilities, installations or other property, or to any ships flying its flag), international responsibility shall be borne by the flag State of the ship causing the damage.

2.5 Freedom of navigation and overflight resulting from the question of plurality of regimes in the territorial sea

PROVISION XLVI

1. In territorial seas whose breadth exceeds 12 nautical miles, ships of all States, whether coastal or not, shall enjoy the right of innocent passage in the form prescribed in article (...) within a limit of ... nautical miles measured from the applicable baselines.
2. Beyond this internal limit, ships shall enjoy freedom of passage subject to the duties of peaceful coexistence and good neighbourliness and also the provisions adopted by the coastal State with regard to the exploration, conservation and exploitation of resources, the preservation of the marine environment, scientific research, the emplacement of installations and the security of navigation and maritime transport.
3. In accordance with the duties referred to in paragraph 2 of this article, ships in transit shall abstain from any activities that may be prejudicial to the coastal State, such as an exercise or practice with weapons or explosives, the launching or taking on board of military devices, the embarking or disembarking of persons or cargo contrary to the customs, fiscal, immigration or sanitary provisions of the coastal State, any act of propaganda, espionage or interference with systems of communication, and other activities not having a direct bearing on passage.
4. Where appropriate, the provisions of paragraphs 2 and 3 of this article shall also apply to the passage of aircraft.
5. The provisions of the coastal State for the purposes referred to in paragraph 2 of this article shall not affect the legitimate and normal exercise of the rights enjoyed by other States with regard to navigation, overflight and other means of international communication in accordance with the provisions of this Convention.